

January 25, 1956

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CONCORD, N.H.

Honorable Emile J. Soucy
Representative from Ward 1, Manchester
2146 Elm Street
Manchester, New Hampshire

Dear Mr. Soucy:

In a letter dated January 19, 1956, you have asked my opinion on the question whether the Legislature could constitutionally enact legislation imposing a tax upon wages and salaries earned in New Hampshire by legal residents of other states without imposing such a tax upon legal residents of New Hampshire.

Such legislation, in my opinion, is prohibited by the Constitution of the United States.

It is a well established principle of federal constitutional law that a state may not subject citizens of other states to duties and obligations more onerous than those which it imposes upon its own citizens. This principle derives from the privileges and immunities clause of the Constitution (Art. IV, s. 2) which reads as follows:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

One authority states the effect of this clause, when applied to the field of taxation, in this manner:

"The general rule is well settled that a citizen coming into a state has a right to be exempt from taxes or excises which are higher than those imposed by the state on its own citizens. A general taxing scheme which discriminates against all non-residents has the necessary effect of including in the discrimination those who are citizens of other states; and if there is no reasonable ground for the diversity of treatment, such a scheme abridges the privileges and immunities to which such citizens are entitled." 12 American Jurisprudence, Constitutional Law, s. 462.

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Corpus Juris Secundum states the principle in this way:

"The federal constitution providing that 'the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States,' prevents a state from enacting tax statutes discriminating against nonresidents in favor of residents of the state, as by granting to residents an exemption denied to nonresidents. It does not, however, entitle citizens of other states to entire immunity from taxation nor to preferential treatment as compared with resident citizens, but only protects them against discriminatory taxation." 16 C.J.S. 941.

The propositions thus expressed are based upon a long line of cases in the Supreme Court of the United States. Among these, to mention but a few, are Ward v. Maryland, 79 U.S. 418, Schaffer v. Carter, 252 U.S. 37, and Travis v. Yale & Towne Manufacturing Co., 252 U.S. 60. The case last named is particularly pertinent to your inquiry in that the opinion contains a reference to the validity of retaliation as a ground for diversity of treatment between residents and non-residents. In that case the New York State Income Tax Law was found to be discriminatory with respect to residents of adjoining states who derived income from activities carried on within New York for the reason that the law gave to residents, in determination of the amount of income subject to tax, the benefit of certain exemptions while denying these exemptions to the non-resident taxpayers. It was thereupon urged on behalf of New York that the adjoining states were free to adopt legislation which would discriminate against the citizens of New York in a similar manner. To this contention the Court replied:

"Nor can discrimination be corrected by retaliation; to prevent this was one of the chief ends sought to be accomplished by the adoption of the Constitution." 252 U.S. at 82.

Very truly yours,

Louis C. Wyman
Attorney General

WEW/aml
cc: Council of State Government